IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9473 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NASIR SALIMBHAI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 12/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 20.6.2000, Annexure-A, in respect of petitioner passed by respondent no. 2 in exercise of

powers conferred upon him under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of the grounds of detention, the petitioner-detenu is a 'dangerous person' within the meaning of sec. 2(c) of the Act and that, his activities are prejudicial to the maintenance of public order. Before passing an order of detention, to arrive at subjective satisfaction, he has placed reliance onf 6 IPC cases, out of which, 3 cases have been lodged in Karanj Police Station and 3 cases have been lodged in Shaher Kotda Police Station and that 6 ases are pending with the Investigating Officer for investigation. That 6 cases are referred to in the grounds of detention. The detaining authority has also placed reliance on the statements of two anonymous witnesses, whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. As per the papers, such statements were recorded on 17.6.2000 and 18.6.2000 respectively and both the statements were verified by the detaining authority on 19.6.2000 and on the next day, he has passed an order of detention, which is challenged in this writ petition.

3. Though rule has been served upon all the respondents, they have not filed affidavits-in-reply, in reply to main petition controverting the grounds of attack mentioned in the memo of petition.

4. Ms. Subhadraben Patel learned advocate for the petitioner has argued that the detaining authority has wrongly claimed privilege under sec. 9(2) of the Act, because he has not done any exercise to verify the correctness of the statements on which he placed reliance. She has cited an authority of Kalidas Chandubhai Kahar vs. State of Gujarat & Ors., reported in 1993(2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under sec. 9(2) of the Act. It has been further held that at the time of exercising the privilege under sec. 9(2) of the Act, balance is required to be struck between the public interest on the one hand and the right of the detenu to make a representation under Article 22(5) of the Constitution on the other. Here in this case, looking to the dates of statements, date of verification and date of passing of the detention order, the case is squarely falls within the four corners of the case of Kalidas Chandubhai Kahar (supra).

5. In view of what is stated hereinabove, this petition is allowed. The impugned order of detention dated 20.6.2000 passed by respondent no. 2 in respect of detenu is set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any custody for any criminal case or proceedings. Rule is made absolute. Direct service is permitted.

(H.H. MEHTA, J.)

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